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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 130103002-3185-01]

RIN 0648-BC85

Fisheries of the Northeastern United States; Proposed 2013-2015 Spiny Dogfish Fishery Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This rule proposes catch limits, commercial quotas, and possession limits for the spiny dogfish fishery for the 2013-2015 fishing years. The proposed action was developed by the Mid-Atlantic and New England Fishery Management Councils pursuant to the fishery specification requirements of the Spiny Dogfish Fishery Management Plan. The proposed management measures are supported by the best available scientific information and reflect recent increases in spiny dogfish biomass. The proposed action is expected to result in positive economic impacts for the spiny dogfish fishery while maintaining the conservation objectives of the Spiny Dogfish Fishery Management Plan.

DATES: Comments must be received on or before [insert date 15 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2013-0044, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0044, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- Mail: Submit written comments to John Bullard, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930.
- Fax: (978) 281-9135, Attn: Tobey Curtis.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publically accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Copies of the specifications document, including the Environmental Assessment and Initial Regulatory Flexibility Analysis (EA/IRFA) and other supporting documents for the specifications, are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The specifications document is also accessible via the Internet at: <http://www.nero.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Tobey Curtis, Fishery Policy Analyst, (978) 281-9273; fax: (978) 281-9135.

SUPPLEMENTARY INFORMATION:

Background

In 1998, NMFS declared Spiny dogfish (*Squalus acanthias*) overfished. Consequently, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) required NMFS to prepare measures to end overfishing and rebuild the spiny dogfish stock. The Mid-Atlantic Fishery Management Council (MAFMC) and the New England Fishery Management Council (NEFMC) developed a joint fishery management plan (FMP), with the MAFMC designated as the administrative lead. The FMP was implemented in 2000, and the spiny dogfish stock was declared to be successfully rebuilt in 2010.

The regulations implementing the FMP at 50 CFR part 648, subpart L, outline the process for specifying an annual catch limit (ACL), commercial quota, possession limit, and other management measures for a period of 1–5 years. The MAFMC’s Scientific and Statistical Committee (SSC) reviews the best available information on the status of the spiny dogfish population and recommends acceptable biological catch (ABC) levels. This recommendation is then used as the basis for catch limits and other management measures developed by the MAFMC’s Spiny Dogfish Monitoring Committee and Joint Spiny Dogfish Committee (which includes members of the NEFMC). The MAFMC and NEFMC then review the recommendations of the committees and make their specification recommendations to NMFS. NMFS reviews those recommendations, and may modify them if necessary to ensure that they are consistent with the FMP and other applicable law. NMFS then publishes proposed measures for public comment.

Spiny Dogfish Stock Status Update

In September 2012, the NMFS Northeast Fisheries Science Center updated the spiny dogfish stock status, using the most recent catch and biomass estimates from the 2012 spring

trawl survey. Updated estimates indicate that the female spawning stock biomass (SSB) for 2012 was 475.634 million lb (215,744 mt), about 35 percent above the target maximum sustainable yield (MSY) biomass proxy (SSB_{MAX}) of 351 million lb (159,288 mt). The 2011 fishing mortality rate (F) estimate for the stock was 0.114, well below the overfishing threshold (F_{MSY}) of 0.2439. Therefore, the spiny dogfish stock is not currently overfished or experiencing overfishing. However, while recruitment has increased in recent years, poor pup production from 1997-2003 is projected to result in declines in SSB between approximately 2014-2020, when the pups from the 1997-2003 years recruit to the spawning stock.

The MAFMC's SSC subsequently recommended new acceptable biological catch (ABC) levels for spiny dogfish for the 2013-2015 fishing years. The ABC recommendations were based on an overfishing level of median catch at the F_{MSY} proxy, and the MAFMC's risk policy for a Level 3 assessment (40-percent probability of overfishing). The resulting spiny dogfish ABCs are 54.474 million lb (24,709 mt) for 2013, 55.455 million lb (25,154 mt) for 2014, and 55.241 million lb (25,057 mt) for 2015.

Council Recommendations

The Spiny Dogfish Monitoring Committee and the Atlantic State Marine Fisheries Commission's (Commission) Spiny Dogfish Technical Committee met in September 2012 to determine the resulting specifications following the FMP's process. To calculate the commercial quota for each year, deductions were made from the ABCs to account for projected Canadian landings (179,000 lb (81 mt)), management uncertainty (3.99 percent of the ACL), U.S. discards (11.698 million lb (5,306 mt)), and U.S. recreational harvest (58,000 lb (26 mt)). The final recommended ACLs and commercial quotas are shown in Table 1. The proposed commercial

quotas represent 14-17-percent increases from the status quo commercial quota (35.694 million lb (16,191 mt)).

The Councils also recommended an increase in the spiny dogfish possession limit from 3,000 lb (1,361 kg) to 4,000 lb (1,814 kg) per trip in each year (Table 1). The possession limit increase is projected to help increase trip level revenues, and reduce the potential for under-harvesting the available quota. The Commission has adopted identical management measures in state waters for 2013.

Table 1. Summary of proposed spiny dogfish ACLs, commercial quotas, and possession limits for the 2013-2015 fishing years.

Year	ACL		Commercial Quota		Possession Limit	
	M lb	mt	M lb	mt	lb	kg
2013	54.295	24,628	40.842	18,526	4,000	1,814
2014	55.277	25,073	41.784	18,953	4,000	1,814
2015	55.063	24,976	41.578	18,859	4,000	1,814

As currently specified in the FMP, quota period 1 (May 1 through October 31) would be allocated 57.9 percent of the commercial quota, and quota period 2 (November 1 through April 30) would be allocated 42.1 percent of the commercial quota. However, the Councils have approved Amendment 3 to the FMP, which would eliminate the seasonal allocation of the commercial quota. Upon implementation of Amendment 3 (which has not yet been submitted to NMFS, but is expected early in the 2013 fishing year), if approved, the commercial quota would only be monitored on an annual, coastwide basis, thereby reducing potential conflicts with the Commission's management of spiny dogfish.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a preliminary determination that this proposed rule is consistent with the Spiny Dogfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

The comment period for this proposed rule (15 days) is shorter than that normally reserved for specifications in order to ensure that the final rule can become effective for the beginning of the fishing year on May 1, 2013.

This proposed rule has been determined to be not significant for the purpose of E.O. 12866.

The MAFMC prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section of the preamble and in the SUMMARY of this proposed rule. A summary of the IRFA follows. A copy of this analysis is available from the MAFMC (see ADDRESSES).

This rule will impact fishing vessels, including commercial fishing entities. For the purposes of analyses under the Regulatory Flexibility Act, the Small Business Administration (SBA) considers commercial fishing entities (NAICS code 114111) to be small entities if they have no more than \$4 million in annual sales, while the size standard for charter/party operators (part of NAICS code 487210) is \$7 million in sales. All of the entities (fishing vessels) affected by this action are considered small entities under the SBA size standards for small fishing businesses. Although multiple vessels may be owned by a single owner, ownership tracking is not readily available to reliably ascertain affiliated entities. Therefore, for the purposes of this analysis, each permitted vessel is treated as a single small entity and is determined to be a small

entity under the RFA. Accordingly, there are no differential impacts between large and small entities under this rule. Information on costs in the fishery is not readily available, and individual vessel profitability cannot be determined directly; therefore, expected changes in gross revenues were used as a proxy for profitability.

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

The proposed increase in the spiny dogfish commercial quota would impact vessels that hold Federal open access commercial spiny dogfish permits, and participate in the spiny dogfish fishery. According to MAFMC's analysis, 2,743 vessels were issued spiny dogfish permits in 2011. However, only 326 vessels landed any amount of spiny dogfish. While the fishery extends from Maine to North Carolina, most active vessels were from Massachusetts (31.6 percent), New Jersey (14.7 percent), New Hampshire (11.4 percent), Rhode Island (9.8 percent), New York (8.0 percent), North Carolina (6.7 percent), and Virginia (5.8 percent).

Economic Impacts of the Proposed Action Compared to Significant Non-Selected Alternatives

Four management alternatives were analyzed for each year, 2013-2015. Alternative 1 represents the preferred alternative proposed in this rule (Table 1). Alternative 2 would include the same commercial quotas as Alternative 1, but would maintain the status quo possession limit of 3,000 lb (1,361 kg), rather than increasing it to 4,000 lb (1,814 kg). Alternative 3 would increase the possession limit to 4,000 lb (1,814 kg), and include the highest possible commercial quotas by not making a deduction from the ACL accounting for management uncertainty (estimated to be 3.99 percent of the ACL). Under Alternative 3, the commercial quotas would be

42.539 million lb (19,295 mt) in 2013, 43.520 million lb (19,740 mt) in 2014, and 43.307 million lb (19,644 mt) in 2015. Alternative 4 represents the status quo alternative, which would maintain fishing year 2012 specifications through 2015 (35.694 million-lb (16,191-mt) commercial quota; 3,000-lb (1,361-kg) possession limit).

The proposed action is likely to result in greater revenue from spiny dogfish landings, which could be 14-17 percent higher than the status quo commercial quota. Based on recent landings information, the spiny dogfish fishery is able to land close to the full amount of fish allowable under the quotas. Total spiny dogfish revenue from the 2011 fishing year was approximately \$4.456 million, when the commercial quota was 20 million lb (9,072 mt). Fishing year 2012 (status quo) spiny dogfish revenue is estimated to be \$7.5 million under a commercial quota of 35.694 million lb (16,191 mt). Assuming the 2011 average price (\$0.21 per lb), landing the proposed commercial quotas (Table 1) would result in gross spiny dogfish revenues of approximately \$8.577 million in 2013, \$8.775 million in 2014, and \$8.731 million in 2015. Additionally, with the proposed possession limit increase from 3,000 lb (1,361 kg) to 4,000 lb (1,814 kg), trip-level spiny dogfish revenues would increase from approximately \$630 per trip to \$840 per trip. The expected increases in spiny dogfish revenue should benefit those ports that are more heavily dependent on spiny dogfish revenue than other communities, including Virginia Beach/Lynnhaven, VA; Rye and Seabrook, NH; and Scituate, MA.

The purpose of the proposed action is to increase spiny dogfish catch limits and landings, consistent with the best available science and the FMP, thereby extending the duration of the fishing season and increasing annual and trip-level spiny dogfish revenues relative to the status quo. The proposed action is expected to maximize the profitability for the spiny dogfish fishery during the 2013-2015 fishing years, without jeopardizing the long-term sustainability of the

stock. Therefore, the economic impacts resulting from the proposed action as compared to alternatives with lower quotas or possession limits are positive.

The proposed action is expected to result in the most positive economic impacts among the alternatives, except for Alternative 3, which could result in slightly higher gross spiny dogfish revenues. However, Alternative 3 does not account for management uncertainty, which would result in a higher risk of exceeding the ACL, and would be inconsistent with the requirements of the FMP. Alternative 3 would also be inconsistent with the Commission's management of the spiny dogfish fishery in state waters; the Commission selected Alternative 1 commercial quotas.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 7, 2013.

Alan D. Risenhoover,
Director, Office of Sustainable Fisheries,
performing the functions and duties of the
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 648.235, revise introductory text to paragraphs (a) and (b), and revise paragraphs (a)(1), and (b)(1) to read as follows:

§ 648.235 Spiny dogfish possession and landing restrictions.

(a) Quota period 1. From May 1 through October 31, vessels issued a valid Federal spiny dogfish permit specified under § 648.4(a)(11) may:

(1) Possess up to 4,000 lb (1.814 mt) of spiny dogfish per trip; and

* * * * *

(b) Quota period 2. From November 1 through April 30, vessels issued a valid Federal spiny dogfish permit specified under § 648.4(a)(11) may:

(1) Possess up to 4,000 lb (1.814 mt) of spiny dogfish per trip; and

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